



Implementation of the Environmental Advisory Rules Committee's Recommendations

Status Report

Fall 2012

This is the third of twelve quarterly reports of the Department of Environmental Quality's (DEQ) progress in addressing the 77 recommendations contained in a report released by the Office of Regulatory Reinvention (ORR) on February 21, 2012. The recommendations were developed by the Environmental Advisory Rules Committee (ARC) whose members were appointed by the ORR and were tasked with conducting a comprehensive review of the department's regulations and offering recommendations for improvement. Please send comments or questions regarding this report to Dave Fiedler, DEQ's Regulatory Affairs Officer, at fiedlerd@michigan.gov.

AIR QUALITY DIVISION

The Air Quality Division created a 24-member Air Advisory Council to address air policy including all of the Environmental ARC recommendations pertaining to air quality. For more information, go to www.michigan.gov/air and select "Air Advisory Council." The schedule of discussion of all 20 AQD recommendations is summarized in the following table:

Meeting	ORR #	Topic	Action
August 2, 2012 Meeting	A-18	Rule 349 - Coke Oven	Update
	A-2	Part 15 - Mercury Rules	Update
	A-7	Rule 801 - NOx	Update
	A-12	NSR Electronic Application	Update
September 13, 2012 Meeting	A-13	State Implementation Plans	Introduction
	A-10 A-15 A-17	Rule 330 - ESP Rule 625 - Pharmaceuticals Rule 703 - Gasoline Tanks	Introduction
	A-8	Rule 1170 - Reporting	Introduction
	A-4 A-20	Rule 206 - Permit Deadlines 18-Month Construction	Introduction
	A-3 A-14	Exemptions	Establish Committee

	A-1	Air Toxics	Establish Committee
Meeting	ORR#	Topic	Action
October 31, 2012 Meeting	A-13	State Implementation Plans	Finalize
	A-8	Rule 1170 - Reporting	Finalize
	A-4	Rule 206 - Permit Deadlines	Finalize for Rulemaking
	A-20	18-Month Construction	
	A-19	Annual MAERS Report	Introduction
	A-6	Op Memo 18	Introduction
	A-5	Dispersion Modeling	Introduction
December 12, 2012 Meeting	A-6	Op Memo 18	Finalize
	A-19	Annual MAERS Report	Finalize
	A-5	Dispersion Modeling	Discussion
	A-9	Visible Emissions	Introduction
	A-11	Rule 901 in Permits	Introduction
January ?, 2013 Meeting	A-15 A-17	Rule 625 - Pharmaceuticals Rule 703 - Gasoline Tanks	Update
	A-2	Part 15 Mercury Rules	Update
	A-7	Rule 801 - NOx	Update
	A-3 A-14	Exemptions	Update
	A-1	Air Toxics	Update
	A-12	NSR Electronic Application	Update
	A-5	Dispersion Modeling	Finalize
	A-9	Visible Emissions	Finalize
	A-11	Rule 901 in Permits	Finalize
	A-16	ROP Demonstration	Update

Recommendation A-4: Rule 206 Process Deadlines and Recommendation A-20: Putting a Hold on the 18-Month Construction Window for a Permit to Install

A Request for Rulemaking (RFR) was approved by the ORR on September 17, 2012, for amending R 336.1206 and R 336.1201.

Recommendation A-7: Rule 801, Rule 803, and State Implementation Plan (HOLD)

The federal rule (Cross State Air Pollution Rule) that changed the federal emissions trading program was vacated by the Washington D.C. Court of Appeals (August 23, 2012) so this recommendation cannot be followed through at this time.

Recommendation A-10: Electrostatic Precipitators

The U.S. Environmental Protection Agency, Region 5, is willing to approve the rescinding of R 336.1330. The AQD will initiate rulemaking.

Recommendations A-18: Coke Oven Compliance Date Rule (COMPLETED)

R 336.1349 was rescinded on October 8, 2012.

REMEDIATION & REDEVELOPMENT DIVISION

Senate Bill (SB) 1328 was introduced by Senator Casperson in the Senate Committee on Natural Resources, Environment, and Great Lakes on September 25, 2012. This bill would amend several parts of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), including Part 196, Clean Michigan Initiative Implementation; Part 201, Environmental Remediation; and Part 213, Leaking Underground Storage Tanks. This bill is intended to address several of the Environmental ARC recommendations, as well as recommendations resulting from the Collaborative Stakeholders Initiative (CSI).

Below is a summary of those issues that are addressed by SB 1328. This summary also includes a listing of issues not included in the bill that the DEQ will address in draft language. The DEQ will continue to work through all of these issues over the month of October to refine the language, as well as develop additional language, in an attempt to comprehensively address the ORR and CSI Recommendations.

SB 1328**Changes to the NREPA to Implement
Recommendations of Environmental ARC and CSI Process****Applying Groundwater Surface Water Interface (GSI) Changes to all Underground Storage Tank (UST) Corrective Actions**

ORR: R-1

CSI: GSI

On July 18, 2012, Governor Snyder signed SB 1090 into law. SB 1090 contained amendments to Part 201 that implemented Recommendation R-1 and the CSI GSI group's recommendations. Thereafter, the DEQ and regulated community expressed a desire for the amendments in SB 1090 to be applicable to all corrective actions under Part 213.

Revising Part 201 Cleanup Criteria

ORR: R-3

CSI: Cleanup Criteria

On December 14, 2010, Governor Granholm signed legislation that amended Part 201 to, among other things, require the DEQ to evaluate and revise the cleanup criteria within two years after the effective date of the amendatory legislation. In addition, Recommendation R-3 proposes to revise the Part 201 cleanup criteria. Further work is necessary to reach consensus on revisions to the cleanup criteria. Accordingly, it has

been suggested that the deadline to evaluate and revise the cleanup criteria under Part 201 be extended to December 31, 2013.

Part 201 Rules

ORR: R-4

Recommendation R-4 proposes to rescind all rules promulgated under Part 201 except the portion of the Part 7 rules related to establishing generic cleanup criteria and screening levels. Concurrent with this process, Recommendation R-4 stated that the DEQ should promulgate a streamlined and efficient rule package that contains only rules that are necessary for program implementation and performance-based rather than prescriptive.

Subsequently, the CSI Rules Group undertook a full review of the Part 201 rules consistent with Recommendation R-4 and concluded that the Part 201 rules should be rescinded without being re-promulgated. Instead, the CSI Rules Group determined that the rules necessary for program implementation could be included within the statute and the rules that are performance-based, or helpful to the implementation of the statute, could be converted to policy and procedures consistent with [DEQ Policy and Procedure No. 09-013](#). The CSI Rules Group determined that some of the rules could be rescinded immediately while others should be rescinded at a future date.

In addition, the CSI Rules Group made the following recommendations that involve statutory changes:

- Create a permit exemption for DEQ-approved or DEQ-funded cleanups.
- Update statutory reference in MCL 324.20114(1)(b) to current 40 CFR sections related to reportable quantities of hazardous substances.
- In connection with rescinding Rules 401 through 415, add statement in statute that providing alternative water is a response activity.
- In connection with rescinding Rule 530, add language in MCL 324.20114(h)(ii) that refers to undertaking a feasibility study.
- Change “cleanup” criteria to “response activity screening levels.” In addition, clarify in statute that “response activity screening levels” may be used as (1) screening levels, (2) basis for making a “facility” determination, and (3) a basis for closure.

Clarify that Site-Specific Criteria May Be Numeric or Non-Numeric

ORR: R-5

Amend Part 201 to allow for non-numeric criteria.

Compliance with MIOSHA Indoor Air Standards

ORR: R-9

Recommendation R-9 proposes to amend Part 201 so that indoor air inhalation risk at workplaces could be addressed at the option of an owner or operator of property by applying MIOSHA and U.S. Environmental Protection Agency (USEPA) workplace exposure criteria for both workers and non-workers in workplaces in lieu of generic Part 201 criteria and without regard to whether or not the extent to which the chemical in question is being used in the workplace.

CSI Rules Group

Certificate of Completion. Amend statute to include certificate of completion from DEQ for completion of response activities upon request.

Delete reference in MCL 324.20114c(2)(b)(iii) to “10 times an applicable soil direct contact cleanup criteria” as it is not based on risk.

CSI Brownfield Group

The CSI Brownfield Group made several recommendations, most of which involved changes to the Brownfield Redevelopment Tax Increment Financing Act. Two of the recommendations, however, involved the brownfield grant and loan program under Part 196, Clean Michigan Initiative Implementation, of NREPA: shift portion of DEQ loans to grants and eliminate full faith and credit requirement under DEQ loans.

Creating Part 201 Liability for Residential Condominium Owners

Although Part 201 includes a specific liability exemption for owners of residential properties, owners or occupiers of residential condominium units could be subject to liability for contamination of non-residential common areas that are included within the condominium complex. Imposing liability against residential condominium owners and occupiers in this instance was never intended.

Issues to be Added:

- ORR R-8: Background concentrations
- ORR R-10: Soil relocation
- ORR R-11: Source material
- Amend statute to allow No Further Action (NFA) on all or a portion of a facility.
- Add a section to encourage and support self-implementation of response activities that will achieve closure, is consistent with risk reduction, is consistent with the law that was applicable at the time the remedy was implemented.

- Consolidate notice provision rules from all of the Part 201 rules into one rule and revise statute to focus notice determination on reasonable and relevant pathways and exposures.
 - Allow use of conceptual site models.
 - Insert a statutory provision into Part 201, allowing the DEQ to issue No Further Interest letters upon request.
 - CSI Due Care.
-

Recommendation R-7b: Part 211-UST Regulations; Recommendation R-7d: Compressed Natural Gas (CNG) Vehicular Fuel Systems; Recommendation R-7f: Storage and Handling of Flammable and Combustible Liquids; Recommendation R-7g: Liquefied Petroleum Gas; and Recommendation R-7h: Storage and Handling of Gaseous and Liquefied Hydrogen Systems (DEQ'S RESPONSIBILITIES COMPLETED)

One of the requirements in each of the above recommendations is moving the program to the Department of Licensing and Regulatory Affairs (LARA). On October 3, 2012, Governor Rick Snyder issued [Executive Order 2012-14](#) which transfers the Aboveground Storage Tank Program and the Underground Storage Tank Program from the DEQ to the Bureau of Fire Services, within LARA. The regulation of leaking underground storage tanks will remain with the DEQ and the Bureau of Fire Services will work cooperatively with the DEQ in identifying leaking storage tanks. LARA will be responsible for completing the rule changes identified in recommendations above, as well as rescind the Transportation of Flammable and Combustible Liquids rules per Recommendation R-7c. The provisions of the Executive Order become effective on December 4, 2012.

Recommendation R-7a: Underground Storage Tank [UST] Inspection, Delegation and Certification (COMPLETED)

R 29.2071 through R 29.2077 were rescinded, effective September 10, 2012.

Recommendation R-7e: Production, Storage, and Handling of Liquefied Natural Gas [LNG] (COMPLETED)

R 29.4671 and R 29.4672 were rescinded, effective August 16, 2012.

Recommendation R-15: Quality Review Team (COMPLETED)

A formal [Division Policy and Procedure](#) on both the District Peer Review Team and the Technical Support Teams became effective on September 4, 2012.

Other Rules Rescinded

The Michigan Underground Storage Tank Qualified Consultants and Certified Professionals Rules, R 324.2150 through R 324.21516, were rescinded, effective October 8, 2012.

RESOURCE MANAGEMENT DIVISION

Recommendation RM-2: Beneficial Reuse

[House Bill \(HB\) 5953](#) was introduced by Representative Huuki and referred to the House Committee on Natural Resources, Tourism, and Outdoor Recreation on September, 27 2012. The bill amends and adds sections to Part 115, Solid Waste Management, and also amends sections of Part 201, Environmental Remediation, of the NREPA.

Recommendation RM-3: Hazardous Waste Regulations and Recommendation RM-7: Hazardous Waste User Charge and Manifest Systems

A request for rulemaking to amend the Hazardous Waste Management rules was approved by the ORR on September 24, 2012. It is identified as [2012-108 EQ](#). The purpose of the rulemaking is to maintain federal authorization to administer the state's Hazardous Waste Management Program under NREPA, in lieu of the federal Hazardous Waste Management Program under the Resource Conservation and Recovery Act of 1976, as amended, by the Hazardous and Solid Waste Amendments of 1984 (RCRA); to improve the overall quality of the rules, both in terms of clarification of existing requirements and areas of program coverage; and, to reduce some of the regulatory burdens on the regulated community by providing streamlined and flexible requirements, including the implementation of Recommendations RM-3 and RM-7.

Recommendation RM-4: Rescind/Repeal Michigan Polychlorinated Biphenyls (PCB) Regulations

Recommendation RM-4 proposed that the PCB rules should be rescinded and that Part 147 of NREPA should be amended as necessary to remove PCB regulations from Michigan statute. [SB 1328](#) was introduced by Senator Casperson in the Senate Committee on Natural Resources, Environment, and Great Lakes on September, 25 2012. This bill would amend several different parts of NREPA, including Part 147, Chemical Compounds, Subpart 1, PCB Compounds.

Recommendation RM-8: Medical Waste Storage Accumulation Limitation

[SB 1334](#) was introduced by Senator Robertson and referred to the Committee on Health Policy on September 27, 2012. This bill amends Sections 13809 and 13811 of the Public Health Code, 1978 PA 368.

WATER RESOURCES DIVISION

Recommendation W-3: Sewerage Systems Rule (COMPLETED)

R 299.2933(4) was rescinded on August 16, 2012.

Recommendation W-5: Nationwide Permitting Approach; W-8: Agricultural Activities under Parts 301 and 303 of NREPA; and W-12: Wetland Mitigation Banks

[HB 5897](#) was introduced by Representative Stamas and referred to the House Committee on Natural Resources, Tourism, and Outdoor Recreation on September 12, 2012. The bill amends sections of Part 13, Permits; Part 301, Inland Lakes and Streams; Part 303, Wetlands Protection; and Part 325, Great Lakes Submerged Lands, of the NREPA.